

1 AMENDMENT TO HOUSE BILL 1281

2 AMENDMENT NO. _____. Amend House Bill 1281, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 1. Short title. This Act may be cited as the
6 Capital Punishment Reform Study Committee Act.

7 Section 2. Capital Punishment Reform Study Committee.

8 (a) There is created the Capital Punishment Reform Study
9 Committee, hereinafter referred to as the Committee,
10 consisting of 15 members appointed as follows:

11 (1) Three members appointed by the President of the
12 Senate;

13 (2) Two members appointed by the Minority Leader of
14 the Senate;

15 (3) Three members appointed by the Speaker of the
16 House of Representatives;

17 (4) Two members appointed by the Minority Leader of
18 the House of Representatives;

19 (5) One member appointed by the Attorney General;

20 (6) One member appointed by the Governor;

21 (7) One member appointed by the Cook County State's
22 Attorney;

1 (8) One member appointed by the Office of the Cook
2 County Public Defender; and

3 (9) One member appointed by the Office of the State
4 Appellate Defender.

5 (b) The Committee shall study the impact of the various
6 reforms to the capital punishment system enacted by the 93rd
7 General Assembly and annually report to the General Assembly
8 on the effects of these reforms. Each report shall include:

9 (1) The impact of the reforms on the issue of
10 uniformity and proportionality in the application of the
11 death penalty including, but not limited to, the tracking
12 of data related to whether the reforms have eliminated
13 the statistically significant differences in sentencing
14 related to the geographic location of the homicide and
15 the race of the victim found by the Governor's Commission
16 on Capital Punishment in its report issued on April 15,
17 2002.

18 (2) The implementation of training for police,
19 prosecutors, defense attorneys, and judges as recommended
20 by the Governor's Commission on Capital Punishment.

21 (3) The impact of the various reforms on the
22 quality of evidence used during capital prosecutions.

23 (4) The quality of representation provided by
24 defense counsel to defendants in capital prosecutions.

25 (5) The impact of the various reforms on the costs
26 associated with the administration of the Illinois
27 capital punishment system.

28 (c) The Committee shall hold hearings on a periodic
29 basis to receive testimony from the public regarding the
30 manner in which reforms have impacted the capital punishment
31 system.

32 (d) The Committee shall submit its final report to the
33 General Assembly no later than 5 years after the effective
34 date of this Act.

1 Section 5. The Illinois Criminal Justice Information Act
2 is amended by adding Section 7.2 as follows:

3 (20 ILCS 3930/7.2 new)

4 Sec. 7.2. Custodial Interview Pilot Program.

5 (a) Legislative findings and intent. The General
6 Assembly finds that technology has made it possible to
7 electronically record custodial interviews of suspects during
8 first degree murder investigations. This technology will
9 protect law enforcement agencies against claims of abuse and
10 coercion by suspects while providing a memorialized account
11 of interviews at police stations. The technology will also
12 provide a better means for courts to review confessions of
13 suspects with direct evidence of demeanor, tone, manner, and
14 content of statements. The General Assembly intends to create
15 a Custodial Interview Pilot Program to establish 4 pilot
16 programs at police stations in the State of Illinois. For
17 each program, video and audio experts shall install equipment
18 and train participating law enforcement agencies to
19 electronically record custodial interviews at their
20 respective police stations. Participating law enforcement
21 agencies shall choose how to use the equipment in cooperation
22 with the local State's Attorney's office. The participating
23 law enforcement agencies may choose to electronically record
24 interviews of suspects for offenses other than first degree
25 murder if they adopt local protocols in cooperation with the
26 local State's Attorney's office.

27 (b) Definitions. In this Section:

28 (1) "Electronically record" means to memorialize by
29 video and audio electronic equipment.

30 (2) "Custodial interviews" means interviews of
31 suspects during first degree murder investigations or
32 other investigations established by local protocol by law
33 enforcement authorities that take place at the police

1 station.

2 (c) Custodial Interview Pilot Program. The Authority
3 shall, subject to appropriation, establish a Custodial
4 Interview Pilot Program to operate 4 custodial interview
5 pilot programs. The programs shall be established in a police
6 station in the County of Cook and in 3 other police stations
7 geographically distributed throughout the State. Each
8 participating law enforcement agency must:

9 (1) Promulgate procedures for recording custodial
10 interviews of suspects during first degree murder
11 investigations by video and audio means.

12 (2) Promulgate procedures for maintaining and
13 storing video and audio recordings.

14 (d) Each of the 4 pilot programs established by the
15 Authority shall be in existence for a minimum of 2 years
16 after its establishment under this Act.

17 (e) Report. No later than one year after the
18 establishment of pilot programs under this Section, the
19 Authority must report to the General Assembly on the efficacy
20 of the Custodial Interview Pilot Program.

21 (f) The Authority shall adopt rules in cooperation with
22 the Illinois Department of State Police to implement this
23 Section.

24 Section 6. The Illinois Police Training Act is amended by
25 changing Section 6.1 as follows:

26 (50 ILCS 705/6.1)

27 Sec. 6.1. Decertification of full-time and part-time
28 police officers.

29 (a) The Board must review police officer conduct and
30 records to ensure that no police officer is certified or
31 provided a valid waiver if that police officer has been
32 convicted of a felony offense under the laws of this State or

1 any other state which if committed in this State would be
2 punishable as a felony. The Board must also ensure that no
3 police officer is certified or provided a valid waiver if
4 that police officer has been convicted on or after the
5 effective date of this amendatory Act of 1999 of any
6 misdemeanor specified in this Section or if committed in any
7 other state would be an offense similar to Section 11-6,
8 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1, 17-1, 17-2,
9 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7 of the Criminal
10 Code of 1961 or to Section 5 or 5.2 of the Cannabis Control
11 Act. The Board must appoint investigators to enforce the
12 duties conferred upon the Board by this Act.

13 (b) It is the responsibility of the sheriff or the chief
14 executive officer of every local law enforcement agency or
15 department within this State to report to the Board any
16 arrest or conviction of any officer for an offense identified
17 in this Section.

18 (c) It is the duty and responsibility of every full-time
19 and part-time police officer in this State to report to the
20 Board within 30 days, and the officer's sheriff or chief
21 executive officer, of his or her arrest or conviction for an
22 offense identified in this Section. Any full-time or
23 part-time police officer who knowingly makes, submits, causes
24 to be submitted, or files a false or untruthful report to the
25 Board must have his or her certificate or waiver immediately
26 decertified or revoked.

27 (d) Any person, or a local or State agency, or the Board
28 is immune from liability for submitting, disclosing, or
29 releasing information of arrests or convictions in this
30 Section as long as the information is submitted, disclosed,
31 or released in good faith and without malice. The Board has
32 qualified immunity for the release of the information.

33 (e) Any full-time or part-time police officer with a
34 certificate or waiver issued by the Board who is convicted of

1 any offense described in this Section immediately becomes
2 decertified or no longer has a valid waiver. The
3 decertification and invalidity of waivers occurs as a matter
4 of law. Failure of a convicted person to report to the Board
5 his or her conviction as described in this Section or any
6 continued law enforcement practice after receiving a
7 conviction is a Class 4 felony.

8 (f) The Board's investigators are peace officers and
9 have all the powers possessed by policemen in cities and by
10 sheriff's, provided that the investigators may exercise those
11 powers anywhere in the State, only after contact and
12 cooperation with the appropriate local law enforcement
13 authorities.

14 (g) The Board must request and receive information and
15 assistance from any federal, state, or local governmental
16 agency as part of the authorized criminal background
17 investigation. The Department of State Police must process,
18 retain, and additionally provide and disseminate information
19 to the Board concerning criminal charges, arrests,
20 convictions, and their disposition, that have been filed
21 before, on, or after the effective date of this amendatory
22 Act of the 91st General Assembly against a basic academy
23 applicant, law enforcement applicant, or law enforcement
24 officer whose fingerprint identification cards are on file or
25 maintained by the Department of State Police. The Federal
26 Bureau of Investigation must provide the Board any criminal
27 history record information contained in its files pertaining
28 to law enforcement officers or any applicant to a Board
29 certified basic law enforcement academy as described in this
30 Act based on fingerprint identification. The Board must make
31 payment of fees to the Department of State Police for each
32 fingerprint card submission in conformance with the
33 requirements of paragraph 22 of Section 55a of the Civil
34 Administrative Code of Illinois.

1 (h) A police officer who has been certified or granted a
2 valid waiver may also be decertified or have his or her
3 waiver revoked upon a determination by the Board that he or
4 she, while under oath, has knowingly and willfully made false
5 statements as to a material fact during a homicide
6 proceeding. A determination may be made only after an
7 investigation and hearing upon a verified complaint filed
8 with the Illinois Law Enforcement Training Standards Board.

9 (1) The Board shall adopt rules governing the
10 investigation and hearing of a verified complaint to
11 assure the police officer due process and to eliminate
12 conflicts of interest within the Board itself.

13 (2) Upon receipt of the initial verified complaint,
14 the Board is empowered to investigate and dismiss the
15 complaint if it finds there is insufficient evidence to
16 support it. Upon the initial filing, the sheriff or
17 police chief, or other employing agency, of the accused
18 officer may suspend, with pay, the accused officer
19 pending a decision of the Board. Upon a Board finding of
20 insufficient evidence, the police officer shall be
21 reinstated. The sheriff or police chief, or employing
22 agency, shall take such necessary action as is ordered by
23 the Board.

24 (i) If the Board finds that after investigation
25 sufficient evidence exists for a hearing, it shall authorize
26 a hearing before an administrative law judge within 45 days
27 of certified notice, unless, based upon the complexity and
28 extent of the allegations and charges, additional time is
29 needed. The administrative law judge shall hear all evidence
30 and prepare a written recommendation of his or her findings
31 to the Board. At the hearing the accused police officer shall
32 be afforded the opportunity to:

33 (1) Be represented by counsel;

34 (2) Be heard in his or her own defense;

1 (3) Produce evidence in his or her defense;

2 (4) Request that the Board compel the attendance of
3 witnesses and production of court records and documents.

4 (j) Once a case has been set for hearing, the person who
5 filed the verified complaint shall have the opportunity to
6 produce evidence to support any charge against a police
7 officer that he or she, while under oath, has knowingly and
8 willfully made false statements as to a material fact during
9 a homicide proceeding.

10 (1) The person who filed the verified complaint
11 shall have the opportunity to be represented by counsel
12 and shall produce evidence to support his or her charges;

13 (2) The person who filed the verified complaint may
14 request the Board to compel the attendance of witnesses
15 and production of court records and documents.

16 (k) The Board shall have the power to issue subpoenas
17 requiring the attendance and testimony of witnesses and the
18 production of court records and documents and shall have the
19 power to administer oaths.

20 (l) The administrative law judge shall have the
21 responsibility of receiving into evidence relevant testimony
22 and documents, including court records, to support or
23 disprove the allegations made by the person filing the
24 verified complaint, and, at the close of that persons case,
25 hear arguments or defer further proceedings if he or she
26 finds that there is insufficient evidence to support the
27 verified complaint that the police officer has, while under
28 oath, knowingly and willfully made false statements as to a
29 material fact during a homicide proceeding. If such a finding
30 is made by the administrative law judge, the hearing shall be
31 ended with a written recommendation to the Board of
32 dismissal.

33 (m) Any person, with the exception of the police officer
34 who is the subject of the hearing, who is served by the Board

1 with a subpoena to appear, testify or produce evidence and
2 refuses to comply with the subpoena is guilty of a Class B
3 misdemeanor. Any circuit court or judge, upon application by
4 the Board, may compel compliance with a subpoena issued by
5 the Board.

6 (n) If the administrative law judge makes a written
7 recommendation other than dismissal of the verified
8 complaint, the Board, based upon a clear and convincing
9 burden of proof standard, shall, by a two-thirds vote of the
10 members present at the quarterly Board meeting which reviews
11 and decides administrative law judge's recommendations, find
12 the police officer not guilty or guilty. If the police
13 officer is found guilty, the Board shall make such orders as
14 the Board deems necessary, including, but not limited to,
15 suspension, probation, or decertification. Should the Board's
16 recommendation be anything other than decertification, the
17 Board shall transfer the matter to the police officer's
18 employer or employing agency for further review. Such review
19 shall be in accordance with the Uniform Peace Officers'
20 Disciplinary Act or applicable employee-employer collective
21 bargaining agreement, if any.

22 (o) The provisions of the Administrative Review Law
23 shall govern all proceedings for the judicial review of any
24 order rendered by the Board. The moving party shall pay the
25 reasonable costs of preparing and certifying the record for
26 review including, if so ordered by the Board, the costs
27 incurred in the hearing before the administrative law judge.
28 If the moving party is the police officer and he or she
29 prevails, the court may award the police officer actual costs
30 incurred in all proceedings, including reasonable attorney
31 fees.

32 (p) If the police officer is found guilty and
33 decertified, the Board shall notify the defendant who was a
34 party to the proceeding that resulted in the police officer's

1 decertification and his or her defense attorney, of the
2 Board's decision. Notification shall be by certified mail
3 sent to the parties' last known addresses.

4 (g) Limitation of action.

5 (1) No action may be commenced pursuant to this
6 Section until after a verdict or other disposition is
7 rendered or the case is dismissed in the trial court.

8 (2) An action pursuant to this Section may not be
9 commenced more than 2 years after the final resolution of
10 the case. For purposes of this Section, final resolution
11 is defined as the trial court's ruling on the State
12 post-conviction proceeding in the case in which it is
13 alleged the police officer, while under oath, knowingly
14 and willfully made false statements as to a material fact
15 during a homicide proceeding. In the event a
16 post-conviction petition is not filed, an action pursuant
17 to this Section may not be commenced more than 2 years
18 after the denial of a petition for certiorari to the
19 United States Supreme Court, or if no petition for
20 certiorari is filed, 2 years after the date such a
21 petition should have been filed. In the event of an
22 acquittal, no proceeding may be commenced pursuant to
23 this Section more than 2 years after the date upon which
24 judgment on the verdict of acquittal was entered.

25 (r) Interested parties. Only interested parties to the
26 criminal prosecution in which the police officer allegedly,
27 while under oath, knowingly and willfully made false
28 statements as to a material fact during a homicide proceeding
29 may file a verified complaint pursuant to this Section. For
30 purposes of this Section, "interested parties" include the
31 defendant or any police officer involved in the investigation
32 of the homicide at issue who has personal knowledge of the
33 alleged statements.

34 (Source: P.A. 91-495, eff. 1-1-00.)

1 Section 10. The Criminal Code of 1961 is amended by
2 changing Sections 9-1 and 14-3 as follows:

3 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

4 Sec. 9-1. First degree Murder - Death penalties -
5 Exceptions - Separate Hearings - Proof - Findings - Appellate
6 procedures - Reversals.

7 (a) A person who kills an individual without lawful
8 justification commits first degree murder if, in performing
9 the acts which cause the death:

10 (1) he either intends to kill or do great bodily
11 harm to that individual or another, or knows that such
12 acts will cause death to that individual or another; or

13 (2) he knows that such acts create a strong
14 probability of death or great bodily harm to that
15 individual or another; or

16 (3) he is attempting or committing a forcible
17 felony other than second degree murder.

18 (b) Aggravating Factors. A defendant who at the time of
19 the commission of the offense has attained the age of 18 or
20 more and who has been found guilty of first degree murder may
21 be sentenced to death if:

22 (1) the murdered individual was a peace officer or
23 fireman killed in the course of performing his official
24 duties, to prevent the performance of his official
25 duties, or in retaliation for performing his official
26 duties, and the defendant knew or should have known that
27 the murdered individual was a peace officer or fireman;
28 or

29 (2) the murdered individual was an employee of an
30 institution or facility of the Department of Corrections,
31 or any similar local correctional agency, killed in the
32 course of performing his official duties, to prevent the
33 performance of his official duties, or in retaliation for

1 performing his official duties, or the murdered
2 individual was an inmate at such institution or facility
3 and was killed on the grounds thereof, or the murdered
4 individual was otherwise present in such institution or
5 facility with the knowledge and approval of the chief
6 administrative officer thereof; or

7 (3) the defendant has been convicted of murdering
8 two or more individuals under subsection (a) of this
9 Section or under any law of the United States or of any
10 state which is substantially similar to subsection (a) of
11 this Section regardless of whether the deaths occurred
12 as the result of the same act or of several related or
13 unrelated acts so long as the deaths were the result of
14 either an intent to kill more than one person or of
15 separate acts which the defendant knew would cause death
16 or create a strong probability of death or great bodily
17 harm to the murdered individual or another; or

18 (4) the murdered individual was killed as a result
19 of the hijacking of an airplane, train, ship, bus or
20 other public conveyance; or

21 (5) the defendant committed the murder pursuant to
22 a contract, agreement or understanding by which he was to
23 receive money or anything of value in return for
24 committing the murder or procured another to commit the
25 murder for money or anything of value; or

26 (6) the murdered individual was killed in the
27 course of another felony if:

28 (a) the murdered individual:

29 (i) was actually killed by the defendant,

30 or

31 (ii) received physical injuries
32 personally inflicted by the defendant
33 substantially contemporaneously with physical
34 injuries caused by one or more persons for

1 whose conduct the defendant is legally
2 accountable under Section 5-2 of this Code, and
3 the physical injuries inflicted by either the
4 defendant or the other person or persons for
5 whose conduct he is legally accountable caused
6 the death of the murdered individual; and

7 (b) in performing the acts which caused the
8 death of the murdered individual or which resulted
9 in physical injuries personally inflicted by the
10 defendant on the murdered individual under the
11 circumstances of subdivision (ii) of subparagraph
12 (a) of paragraph (6) of subsection (b) of this
13 Section, the defendant acted with the intent to kill
14 the murdered individual or with the knowledge that
15 his acts created a strong probability of death or
16 great bodily harm to the murdered individual or
17 another; and

18 (c) the other felony was an inherently violent
19 crime ~~one-of-the--following:--armed--robbery,--armed~~
20 ~~violence,--robbery,--predatory-criminal-sexual-assault~~
21 ~~of--a--child,--aggravated--criminal--sexual-assault,~~
22 ~~aggravated---kidnapping,---aggravated---vehicular~~
23 ~~hijacking,--forcible--detention,--arsen,--aggravated~~
24 ~~arsen,--aggravated--stalking,--burglary,--residential~~
25 ~~burglary,--home--invasion,--calculated-criminal-drug~~
26 ~~conspiracy-as-defined-in-Section-405-of-the-Illinois~~
27 ~~Controlled-Substances-Act,--streetgang-criminal--drug~~
28 ~~conspiracy--as--defined--in--Section--405.2--of--the~~
29 ~~Illinois--Controlled--Substances-Act,~~ or the attempt
30 to commit an inherently violent crime. In this
31 subparagraph (c), "inherently violent crime"
32 includes, but is not limited to, armed robbery,
33 robbery, predatory criminal sexual assault of a
34 child, aggravated criminal sexual assault,

1 aggravated kidnapping, aggravated vehicular
2 hijacking, aggravated arson, aggravated stalking,
3 residential burglary, and home invasion any-of-the
4 ~~felonies-listed-in-this-subsection-(e);~~ or

5 (7) the murdered individual was under 12 years of
6 age and the death resulted from exceptionally brutal or
7 heinous behavior indicative of wanton cruelty; or

8 (8) the defendant committed the murder with intent
9 to prevent the murdered individual from testifying or
10 participating in any criminal investigation or
11 prosecution or giving material assistance to the State in
12 any investigation or prosecution, either against the
13 defendant or another; or the defendant committed the
14 murder because the murdered individual was a witness in
15 any prosecution or gave material assistance to the State
16 in any investigation or prosecution, either against the
17 defendant or another; for purposes of this paragraph (8),
18 "participating in any criminal investigation or
19 prosecution" is intended to include those appearing in
20 the proceedings in any capacity such as trial judges,
21 prosecutors, defense attorneys, investigators, witnesses,
22 or jurors; or

23 (9) the defendant, while committing an offense
24 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
25 407 or 407.1 or subsection (b) of Section 404 of the
26 Illinois Controlled Substances Act, or while engaged in a
27 conspiracy or solicitation to commit such offense,
28 intentionally killed an individual or counseled,
29 commanded, induced, procured or caused the intentional
30 killing of the murdered individual; or

31 (10) the defendant was incarcerated in an
32 institution or facility of the Department of Corrections
33 at the time of the murder, and while committing an
34 offense punishable as a felony under Illinois law, or

1 while engaged in a conspiracy or solicitation to commit
2 such offense, intentionally killed an individual or
3 counseled, commanded, induced, procured or caused the
4 intentional killing of the murdered individual; or

5 (11) the murder was committed in a cold, calculated
6 and premeditated manner pursuant to a preconceived plan,
7 scheme or design to take a human life by unlawful means,
8 and the conduct of the defendant created a reasonable
9 expectation that the death of a human being would result
10 therefrom; or

11 (12) the murdered individual was an emergency
12 medical technician - ambulance, emergency medical
13 technician - intermediate, emergency medical technician -
14 paramedic, ambulance driver, or other medical assistance
15 or first aid personnel, employed by a municipality or
16 other governmental unit, killed in the course of
17 performing his official duties, to prevent the
18 performance of his official duties, or in retaliation for
19 performing his official duties, and the defendant knew or
20 should have known that the murdered individual was an
21 emergency medical technician - ambulance, emergency
22 medical technician - intermediate, emergency medical
23 technician - paramedic, ambulance driver, or other
24 medical assistance or first aid personnel; or

25 (13) the defendant was a principal administrator,
26 organizer, or leader of a calculated criminal drug
27 conspiracy consisting of a hierarchical position of
28 authority superior to that of all other members of the
29 conspiracy, and the defendant counseled, commanded,
30 induced, procured, or caused the intentional killing of
31 the murdered person; or

32 (14) the murder was intentional and involved the
33 infliction of torture. For the purpose of this Section
34 torture means the infliction of or subjection to extreme

1 physical pain, motivated by an intent to increase or
2 prolong the pain, suffering or agony of the victim; or

3 (15) the murder was committed as a result of the
4 intentional discharge of a firearm by the defendant from
5 a motor vehicle and the victim was not present within the
6 motor vehicle; or

7 (16) the murdered individual was 60 years of age or
8 older and the death resulted from exceptionally brutal or
9 heinous behavior indicative of wanton cruelty; or

10 (17) the murdered individual was a disabled person
11 and the defendant knew or should have known that the
12 murdered individual was disabled. For purposes of this
13 paragraph (17), "disabled person" means a person who
14 suffers from a permanent physical or mental impairment
15 resulting from disease, an injury, a functional disorder,
16 or a congenital condition that renders the person
17 incapable of adequately providing for his or her own
18 health or personal care; or

19 (18) the murder was committed by reason of any
20 person's activity as a community policing volunteer or to
21 prevent any person from engaging in activity as a
22 community policing volunteer; or

23 (19) the murdered individual was subject to an
24 order of protection and the murder was committed by a
25 person against whom the same order of protection was
26 issued under the Illinois Domestic Violence Act of 1986;
27 or

28 (20) the murdered individual was known by the
29 defendant to be a teacher or other person employed in any
30 school and the teacher or other employee is upon the
31 grounds of a school or grounds adjacent to a school, or
32 is in any part of a building used for school purposes; or

33 (21) the murder was committed by the defendant in
34 connection with or as a result of the offense of

1 terrorism as defined in Section 29D-30 of this Code.

2 (c) Consideration of factors in Aggravation and
3 Mitigation.

4 The court shall consider, or shall instruct the jury to
5 consider any aggravating and any mitigating factors which are
6 relevant to the imposition of the death penalty. Aggravating
7 factors may include but need not be limited to those factors
8 set forth in subsection (b). Mitigating factors may include
9 but need not be limited to the following:

10 (1) the defendant has no significant history of
11 prior criminal activity;

12 (2) the murder was committed while the defendant
13 was under the influence of extreme mental or emotional
14 disturbance, although not such as to constitute a defense
15 to prosecution;

16 (3) the murdered individual was a participant in
17 the defendant's homicidal conduct or consented to the
18 homicidal act;

19 (4) the defendant acted under the compulsion of
20 threat or menace of the imminent infliction of death or
21 great bodily harm;

22 (5) the defendant was not personally present during
23 commission of the act or acts causing death;

24 (6) the defendant's background includes a history
25 of extreme emotional or physical abuse;

26 (7) the defendant suffers from a reduced mental
27 capacity.

28 (d) Separate sentencing hearing.

29 Where requested by the State, the court shall conduct a
30 separate sentencing proceeding to determine the existence of
31 factors set forth in subsection (b) and to consider any
32 aggravating or mitigating factors as indicated in subsection
33 (c). The proceeding shall be conducted:

34 (1) before the jury that determined the defendant's

1 guilt; or

2 (2) before a jury impanelled for the purpose of the
3 proceeding if:

4 A. the defendant was convicted upon a plea of
5 guilty; or

6 B. the defendant was convicted after a trial
7 before the court sitting without a jury; or

8 C. the court for good cause shown discharges
9 the jury that determined the defendant's guilt; or

10 (3) before the court alone if the defendant waives
11 a jury for the separate proceeding.

12 (e) Evidence and Argument.

13 During the proceeding any information relevant to any of
14 the factors set forth in subsection (b) may be presented by
15 either the State or the defendant under the rules governing
16 the admission of evidence at criminal trials. Any
17 information relevant to any additional aggravating factors or
18 any mitigating factors indicated in subsection (c) may be
19 presented by the State or defendant regardless of its
20 admissibility under the rules governing the admission of
21 evidence at criminal trials. The State and the defendant
22 shall be given fair opportunity to rebut any information
23 received at the hearing.

24 (f) Proof.

25 The burden of proof of establishing the existence of any
26 of the factors set forth in subsection (b) is on the State
27 and shall not be satisfied unless established beyond a
28 reasonable doubt.

29 (g) Procedure - Jury.

30 If at the separate sentencing proceeding the jury finds
31 that none of the factors set forth in subsection (b) exists,
32 the court shall sentence the defendant to a term of
33 imprisonment under Chapter V of the Unified Code of
34 Corrections. If there is a unanimous finding by the jury

1 that one or more of the factors set forth in subsection (b)
2 exist, the jury shall consider aggravating and mitigating
3 factors as instructed by the court and shall determine
4 whether the sentence of death shall be imposed. If the jury
5 determines unanimously, after weighing the factors in
6 aggravation and mitigation, that death is the appropriate
7 sentence ~~that--there-are-no-mitigating-factors-sufficient-to~~
8 ~~preclude-the-imposition-of--the--death--sentence,~~ the court
9 shall sentence the defendant to death. If the court does not
10 concur with the jury determination that death is the
11 appropriate sentence, the court shall set forth reasons in
12 writing including what facts or circumstances the court
13 relied upon, along with any relevant documents, that
14 compelled the court to non-concur with the sentence. This
15 document and any attachments shall be part of the record for
16 appellate review. The court shall be bound by the jury's
17 sentencing determination.

18 If after weighing the factors in aggravation and
19 mitigation, one or more jurors determines that death is not
20 the appropriate sentence, ~~Unless-the-jury--unanimously--finds~~
21 ~~that--there--are-no-mitigating-factors-sufficient-to-preclude~~
22 ~~the-imposition-of-the-death-sentence~~ the court shall sentence
23 the defendant to a term of imprisonment under Chapter V of
24 the Unified Code of Corrections.

25 (h) Procedure - No Jury.

26 In a proceeding before the court alone, if the court
27 finds that none of the factors found in subsection (b)
28 exists, the court shall sentence the defendant to a term of
29 imprisonment under Chapter V of the Unified Code of
30 Corrections.

31 If the Court determines that one or more of the factors
32 set forth in subsection (b) exists, the Court shall consider
33 any aggravating and mitigating factors as indicated in
34 subsection (c). If the Court determines, after weighing the

1 factors in aggravation and mitigation, that death is the
2 appropriate sentence that--there--are--no--mitigating--factors
3 sufficient-to-preclude-the-imposition-of-the-death--sentence,
4 the Court shall sentence the defendant to death.

5 If Unless the court finds that there-are-no-mitigating
6 factors-sufficient-to-preclude-the-imposition-of-the-sentence
7 of death is not the appropriate sentence, the court shall
8 sentence the defendant to a term of imprisonment under
9 Chapter V of the Unified Code of Corrections.

10 (h-5) Decertification as a capital case.

11 In a case in which the defendant has been found guilty of
12 first degree murder by a judge or jury, or a case on remand
13 for resentencing, and the State seeks the death penalty as an
14 appropriate sentence, on the court's own motion or the
15 written motion of the defendant, the court may decertify the
16 case as a death penalty case if the court finds that the only
17 evidence supporting the defendant's conviction is the
18 uncorroborated testimony of an informant witness, as defined
19 in Section 115-21 of the Code of Criminal Procedure of 1963,
20 concerning the confession or admission of the defendant or
21 that the sole evidence against the defendant is a single
22 eyewitness or single accomplice without any other
23 corroborating evidence. If the court decertifies the case as
24 a capital case under either of the grounds set forth above,
25 the court shall issue a written finding. The State may
26 pursue its right to appeal the decertification pursuant to
27 Supreme Court Rule 604(a)(1). If the court does not
28 decertify the case as a capital case, the matter shall
29 proceed to the eligibility phase of the sentencing hearing.

30 (i) Appellate Procedure.

31 The conviction and sentence of death shall be subject to
32 automatic review by the Supreme Court. Such review shall be
33 in accordance with rules promulgated by the Supreme Court.
34 The Illinois Supreme Court may overturn the death sentence,

1 and order the imposition of imprisonment under Chapter V of
2 the Unified Code of Corrections if the court finds that the
3 death sentence is fundamentally unjust as applied to the
4 particular case. If the Illinois Supreme Court finds that the
5 death sentence is fundamentally unjust as applied to the
6 particular case, independent of any procedural grounds for
7 relief, the Illinois Supreme Court shall issue a written
8 opinion explaining this finding.

9 (j) Disposition of reversed death sentence.

10 In the event that the death penalty in this Act is held
11 to be unconstitutional by the Supreme Court of the United
12 States or of the State of Illinois, any person convicted of
13 first degree murder shall be sentenced by the court to a term
14 of imprisonment under Chapter V of the Unified Code of
15 Corrections.

16 In the event that any death sentence pursuant to the
17 sentencing provisions of this Section is declared
18 unconstitutional by the Supreme Court of the United States or
19 of the State of Illinois, the court having jurisdiction over
20 a person previously sentenced to death shall cause the
21 defendant to be brought before the court, and the court shall
22 sentence the defendant to a term of imprisonment under
23 Chapter V of the Unified Code of Corrections.

24 (k) Guidelines for seeking the death penalty.

25 The Attorney General and State's Attorneys Association
26 shall consult on voluntary guidelines for procedures
27 governing whether or not to seek the death penalty. The
28 guidelines do not have the force of law and are only advisory
29 in nature.

30 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;
31 92-854, eff. 12-5-02.)

32 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

33 Sec. 14-3. Exemptions. The following activities shall

1 be exempt from the provisions of this Article:

2 (a) Listening to radio, wireless and television
3 communications of any sort where the same are publicly made;

4 (b) Hearing conversation when heard by employees of any
5 common carrier by wire incidental to the normal course of
6 their employment in the operation, maintenance or repair of
7 the equipment of such common carrier by wire so long as no
8 information obtained thereby is used or divulged by the
9 hearer;

10 (c) Any broadcast by radio, television or otherwise
11 whether it be a broadcast or recorded for the purpose of
12 later broadcasts of any function where the public is in
13 attendance and the conversations are overheard incidental to
14 the main purpose for which such broadcasts are then being
15 made;

16 (d) Recording or listening with the aid of any device to
17 any emergency communication made in the normal course of
18 operations by any federal, state or local law enforcement
19 agency or institutions dealing in emergency services,
20 including, but not limited to, hospitals, clinics, ambulance
21 services, fire fighting agencies, any public utility,
22 emergency repair facility, civilian defense establishment or
23 military installation;

24 (e) Recording the proceedings of any meeting required to
25 be open by the Open Meetings Act, as amended;

26 (f) Recording or listening with the aid of any device to
27 incoming telephone calls of phone lines publicly listed or
28 advertised as consumer "hotlines" by manufacturers or
29 retailers of food and drug products. Such recordings must be
30 destroyed, erased or turned over to local law enforcement
31 authorities within 24 hours from the time of such recording
32 and shall not be otherwise disseminated. Failure on the part
33 of the individual or business operating any such recording or
34 listening device to comply with the requirements of this

1 subsection shall eliminate any civil or criminal immunity
2 conferred upon that individual or business by the operation
3 of this Section;

4 (g) With prior notification to the State's Attorney of
5 the county in which it is to occur, recording or listening
6 with the aid of any device to any conversation where a law
7 enforcement officer, or any person acting at the direction of
8 law enforcement, is a party to the conversation and has
9 consented to it being intercepted or recorded under
10 circumstances where the use of the device is necessary for
11 the protection of the law enforcement officer or any person
12 acting at the direction of law enforcement, in the course of
13 an investigation of a forcible felony, a felony violation of
14 the Illinois Controlled Substances Act, a felony violation of
15 the Cannabis Control Act, or any "streetgang related" or
16 "gang-related" felony as those terms are defined in the
17 Illinois Streetgang Terrorism Omnibus Prevention Act. Any
18 recording or evidence derived as the result of this exemption
19 shall be inadmissible in any proceeding, criminal, civil or
20 administrative, except (i) where a party to the conversation
21 suffers great bodily injury or is killed during such
22 conversation, or (ii) when used as direct impeachment of a
23 witness concerning matters contained in the interception or
24 recording. The Director of the Department of State Police
25 shall issue regulations as are necessary concerning the use
26 of devices, retention of tape recordings, and reports
27 regarding their use;

28 (g-5) With approval of the State's Attorney of the
29 county in which it is to occur, recording or listening with
30 the aid of any device to any conversation where a law
31 enforcement officer, or any person acting at the direction of
32 law enforcement, is a party to the conversation and has
33 consented to it being intercepted or recorded in the course
34 of an investigation of any offense defined in Article 29D of

1 this Code. In all such cases, an application for an order
2 approving the previous or continuing use of an eavesdropping
3 device must be made within 48 hours of the commencement of
4 such use. In the absence of such an order, or upon its
5 denial, any continuing use shall immediately terminate. The
6 Director of State Police shall issue rules as are necessary
7 concerning the use of devices, retention of tape recordings,
8 and reports regarding their use.

9 Any recording or evidence obtained or derived in the
10 course of an investigation of any offense defined in Article
11 29D of this Code shall, upon motion of the State's Attorney
12 or Attorney General prosecuting any violation of Article 29D,
13 be reviewed in camera with notice to all parties present by
14 the court presiding over the criminal case, and, if ruled by
15 the court to be relevant and otherwise admissible, it shall
16 be admissible at the trial of the criminal case.

17 This subsection (g-5) is inoperative on and after January
18 1, 2005. No conversations recorded or monitored pursuant to
19 this subsection (g-5) shall be inadmissible in a court of law
20 by virtue of the repeal of this subsection (g-5) on January
21 1, 2005_i.

22 (h) Recordings made simultaneously with a video
23 recording of an oral conversation between a peace officer,
24 who has identified his or her office, and a person stopped
25 for an investigation of an offense under the Illinois Vehicle
26 Code;

27 (i) Recording of a conversation made by or at the
28 request of a person, not a law enforcement officer or agent
29 of a law enforcement officer, who is a party to the
30 conversation, under reasonable suspicion that another party
31 to the conversation is committing, is about to commit, or has
32 committed a criminal offense against the person or a member
33 of his or her immediate household, and there is reason to
34 believe that evidence of the criminal offense may be obtained

1 by the recording; and

2 (j) The use of a telephone monitoring device by either
3 (1) a corporation or other business entity engaged in
4 marketing or opinion research or (2) a corporation or other
5 business entity engaged in telephone solicitation, as defined
6 in this subsection, to record or listen to oral telephone
7 solicitation conversations or marketing or opinion research
8 conversations by an employee of the corporation or other
9 business entity when:

10 (i) the monitoring is used for the purpose of
11 service quality control of marketing or opinion research
12 or telephone solicitation, the education or training of
13 employees or contractors engaged in marketing or opinion
14 research or telephone solicitation, or internal research
15 related to marketing or opinion research or telephone
16 solicitation; and

17 (ii) the monitoring is used with the consent of at
18 least one person who is an active party to the marketing
19 or opinion research conversation or telephone
20 solicitation conversation being monitored.

21 No communication or conversation or any part, portion, or
22 aspect of the communication or conversation made, acquired,
23 or obtained, directly or indirectly, under this exemption
24 (j), may be, directly or indirectly, furnished to any law
25 enforcement officer, agency, or official for any purpose or
26 used in any inquiry or investigation, or used, directly or
27 indirectly, in any administrative, judicial, or other
28 proceeding, or divulged to any third party.

29 When recording or listening authorized by this subsection
30 (j) on telephone lines used for marketing or opinion research
31 or telephone solicitation purposes results in recording or
32 listening to a conversation that does not relate to marketing
33 or opinion research or telephone solicitation; the person
34 recording or listening shall, immediately upon determining

1 that the conversation does not relate to marketing or opinion
2 research or telephone solicitation, terminate the recording
3 or listening and destroy any such recording as soon as is
4 practicable.

5 Business entities that use a telephone monitoring or
6 telephone recording system pursuant to this exemption (j)
7 shall provide current and prospective employees with notice
8 that the monitoring or recordings may occur during the course
9 of their employment. The notice shall include prominent
10 signage notification within the workplace.

11 Business entities that use a telephone monitoring or
12 telephone recording system pursuant to this exemption (j)
13 shall provide their employees or agents with access to
14 personal-only telephone lines which may be pay telephones,
15 that are not subject to telephone monitoring or telephone
16 recording.

17 For the purposes of this subsection (j), "telephone
18 solicitation" means a communication through the use of a
19 telephone by live operators:

- 20 (i) soliciting the sale of goods or services;
- 21 (ii) receiving orders for the sale of goods or
22 services;
- 23 (iii) assisting in the use of goods or services; or
- 24 (iv) engaging in the solicitation, administration,
25 or collection of bank or retail credit accounts.

26 For the purposes of this subsection (j), "marketing or
27 opinion research" means a marketing or opinion research
28 interview conducted by a live telephone interviewer engaged
29 by a corporation or other business entity whose principal
30 business is the design, conduct, and analysis of polls and
31 surveys measuring the opinions, attitudes, and responses of
32 respondents toward products and services, or social or
33 political issues, or both; and

34 (k) Recording the interview or statement of any person

1 when the person knows that the interview is being conducted
2 by a law enforcement officer or prosecutor and the interview
3 takes place at a police station that is currently
4 participating in the Custodial Interview Pilot Program
5 established under the Illinois Criminal Justice Information
6 Act.

7 (Source: P.A. 91-357, eff. 7-29-99; 92-854, eff. 12-5-02.)

8 Section 15. The Code of Criminal Procedure of 1963 is
9 amended by changing Sections 114-13, 116-3, 122-1, and
10 122-2.1 and adding Article 107A and Sections 114-15, 115-21,
11 115-22, 116-5, and 122-2.2 as follows:

12 (725 ILCS 5/107A Art. heading new)

13 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

14 (725 ILCS 5/107A-5 new)

15 Sec. 107A-5. Lineup and photo spread procedure.

16 (a) All lineups shall be photographed or otherwise
17 recorded. These photographs shall be disclosed to the accused
18 and his or her defense counsel during discovery proceedings
19 as provided in Illinois Supreme Court Rules. All photographs
20 of suspects shown to an eyewitness during the photo spread
21 shall be disclosed to the accused and his or her defense
22 counsel during discovery proceedings as provided in Illinois
23 Supreme Court Rules.

24 (b) Each eyewitness who views a lineup or photo spread
25 shall sign a form containing the following information:

26 (1) The suspect might not be in the lineup or photo
27 spread and the eyewitness is not obligated to make an
28 identification.

29 (2) The eyewitness should not assume that the
30 person administering the lineup or photo spread knows
31 which person is the suspect in the case.

1 (c) Suspects in a lineup or photo spread should not
2 appear to be substantially different from "fillers" or
3 "distracters" in the lineup or photo spread, based on the
4 eyewitness' previous description of the perpetrator, or based
5 on other factors that would draw attention to the suspect.

6 (725 ILCS 5/107A-10 new)

7 Sec. 107A-10. Pilot study on sequential lineup
8 procedures.

9 (a) Legislative intent. Because the goal of a police
10 investigation is to apprehend the person or persons
11 responsible for committing a crime, it is useful to conduct a
12 pilot study in the field on the effectiveness of the
13 sequential method for lineup procedures.

14 (b) Establishment of pilot jurisdictions. The Department
15 of State Police shall select 3 police departments to
16 participate in a one-year pilot study on the effectiveness of
17 the sequential lineup method for photo and live lineup
18 procedures. One such pilot jurisdiction shall be a police
19 district within a police department in a municipality whose
20 population is at least 500,000 residents; one such pilot
21 jurisdiction shall be a police department in a municipality
22 whose population is at least 100,000 but less than 500,000;
23 and one such pilot jurisdiction shall be a police department
24 in a municipality whose population is less than 100,000. All
25 such pilot jurisdictions shall be selected no later than
26 January 1, 2004.

27 (c) Sequential lineup procedures in pilot jurisdictions.
28 For any offense alleged to have been committed in a pilot
29 jurisdiction on or after January 1, 2004, selected lineup
30 identification procedure shall be presented in the sequential
31 method in which a witness is shown lineup participants one at
32 a time, using the following procedures:

33 (1) The witness shall be requested to state whether

1 the individual shown is the perpetrator of the crime
2 prior to viewing the next lineup participant. Only one
3 member of the lineup shall be a suspect and the remainder
4 shall be "fillers" who are not suspects but fit the
5 general description of the offender without the suspect
6 unduly standing out;

7 (2) The lineup administrator, when feasible for
8 municipalities under 100,000, shall be someone who is not
9 aware of which member of the lineup is the suspect in the
10 case; and

11 (3) Prior to presenting the lineup using the
12 sequential method the lineup administrator shall:

13 (A) Inform the witness that the perpetrator
14 may or may not be among those shown, and the witness
15 should not feel compelled to make an identification;

16 (B) Inform the witness that he or she will
17 view individuals one at a time and will be requested
18 to state whether the individual shown is the
19 perpetrator of the crime, prior to viewing the next
20 lineup participant; and

21 (C) Ask the witness to state in his or her own
22 words how sure he or she is that the person
23 identified is the actual offender. During the
24 statement, or as soon thereafter as reasonably
25 possible, the witness's actual words shall be
26 documented.

27 (d) Application. This Section applies to selected live
28 lineups that are composed and presented at a police station
29 and to selected photo lineups regardless of where presented;
30 provided that this Section does not apply in police
31 investigations in which a spontaneous identification is
32 possible and no lineup procedure is being used. This Section
33 does not affect the right to counsel afforded by the U.S. or
34 Illinois Constitutions or State law at any stage of a

1 criminal proceeding.

2 (e) Selection of lineups. The participating
3 jurisdictions shall develop a protocol for the selection and
4 administration of lineups which is practical, designed to
5 elicit information for comparative evaluation purposes, and
6 is consistent with objective scientific research methodology.

7 (f) Training and administrators. The Department of State
8 Police shall offer training to police officers and any other
9 appropriate personnel on the sequential method of conducting
10 lineup procedures in the pilot jurisdictions and the
11 requirements of this Section. The Department of State Police
12 may seek funding for training and administration from the
13 Illinois Criminal Justice Information Authority and the
14 Illinois Law Enforcement Training Standards Board if
15 necessary.

16 (g) Report on the pilot study. The Department of State
17 Police shall gather information from each of the
18 participating police departments selected as a pilot
19 jurisdiction with respect to the effectiveness of the
20 sequential method for lineup procedures and shall file a
21 report of its findings with the Governor and the General
22 Assembly no later than April 1, 2005.

23 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

24 Sec. 114-13. Discovery in criminal cases.

25 (a) Discovery procedures in criminal cases shall be in
26 accordance with Supreme Court Rules.

27 (b) Any public investigative, law enforcement, or other
28 public agency responsible for investigating any homicide
29 offense or participating in an investigation of any homicide
30 offense, other than defense investigators, shall provide to
31 the authority prosecuting the offense all investigative
32 material, including but not limited to reports, memoranda,
33 and field notes, that have been generated by or have come

1 into the possession of the investigating agency concerning
2 the homicide offense being investigated. In addition, the
3 investigating agency shall provide to the prosecuting
4 authority any material or information, including but not
5 limited to reports, memoranda, and field notes, within its
6 possession or control that would tend to negate the guilt of
7 the accused of the offense charged or reduce his or her
8 punishment for the homicide offense. Every investigative and
9 law enforcement agency in this State shall adopt policies to
10 ensure compliance with these standards. Any investigative,
11 law enforcement, or other agency responsible for
12 investigating any "non-homicide felony" offense or
13 participating in an investigation of any "non-homicide
14 felony" offense, other than defense investigators, shall
15 provide to the authority prosecuting the offense all
16 investigative material, including but not limited to reports
17 and memoranda that have been generated by or have come into
18 the possession of the investigating agency concerning the
19 "non-homicide felony" offense being investigated. In
20 addition, the investigating agency shall provide to the
21 prosecuting authority any material or information, including
22 but not limited to reports and memoranda, within its
23 possession or control that would tend to negate the guilt of
24 the accused of the "non-homicide felony" offense charged or
25 reduce his or her punishment for the "non-homicide felony"
26 offense. This obligation to furnish exculpatory evidence
27 exists whether the information was recorded or documented in
28 any form. Every investigative and law enforcement agency in
29 this State shall adopt policies to ensure compliance with
30 these standards.

31 (Source: Laws 1963, p. 2836.)

32 (725 ILCS 5/114-15 new)

33 Sec. 114-15. Mental retardation.

1 (a) In a first degree murder case in which the State
2 seeks the death penalty as an appropriate sentence, any party
3 may raise the issue of the defendant's mental retardation by
4 motion. A defendant wishing to raise the issue of his or her
5 mental retardation shall provide written notice to the State
6 and the court as soon as the defendant reasonably believes
7 such issue will be raised.

8 (b) The issue of the defendant's mental retardation
9 shall be determined in a pretrial hearing. The court shall be
10 the fact finder on the issue of the defendant's mental
11 retardation and shall determine the issue by a preponderance
12 of evidence in which the moving party has the burden of
13 proof. The court may appoint an expert in the field of mental
14 retardation. The defendant and the State may offer experts
15 from the field of mental retardation. The court shall
16 determine admissibility of evidence and qualification as an
17 expert.

18 (c) If after a plea of guilty to first degree murder, or
19 a finding of guilty of first degree murder in a bench trial,
20 or a verdict of guilty for first degree murder in a jury
21 trial, or on a matter remanded from the Supreme Court for
22 sentencing for first degree murder, and the State seeks the
23 death penalty as an appropriate sentence, the defendant may
24 raise the issue of defendant's mental retardation not at
25 eligibility but at aggravation and mitigation. The defendant
26 and the State may offer experts from the field of mental
27 retardation. The court shall determine admissibility of
28 evidence and qualification as an expert.

29 (d) In determining whether the defendant is mentally
30 retarded, the mental retardation must have manifested itself
31 by the age of 18. IQ tests and psychometric tests
32 administered to the defendant must be the kind and type
33 recognized by experts in the field of mental retardation. In
34 order for the defendant to be considered mentally retarded, a

1 low IQ must be accompanied by significant deficits in
2 adaptive behavior in at least 2 of the following skill areas:
3 communication, self-care, social or interpersonal skills,
4 home living, self-direction, academics, health and safety,
5 use of community resources, and work. An intelligence
6 quotient (IQ) of 75 or below is presumptive evidence of
7 mental retardation.

8 (e) Evidence of mental retardation that did not result
9 in disqualifying the case as a capital case, may be
10 introduced as evidence in mitigation during a capital
11 sentencing hearing. A failure of the court to determine that
12 the defendant is mentally retarded does not preclude the
13 court during trial from allowing evidence relating to mental
14 disability should the court deem it appropriate.

15 (f) If the court determines at a pretrial hearing or
16 after remand that a capital defendant is mentally retarded,
17 and the State does not appeal pursuant to Supreme Court Rule
18 604, the case shall no longer be considered a capital case
19 and the procedural guidelines established for capital cases
20 shall no longer be applicable to the defendant. In that
21 case, the defendant shall be sentenced under the sentencing
22 provisions of Chapter V of the Unified Code of Corrections.

23 (725 ILCS 5/115-21 new)

24 Sec. 115-21. Informant testimony.

25 (a) For the purposes of this Section, "informant" means
26 someone who is purporting to testify about admissions made to
27 him or her by the accused while incarcerated in a penal
28 institution contemporaneously.

29 (b) This Section applies to any capital case in which
30 the prosecution attempts to introduce evidence of
31 incriminating statements made by the accused to or overheard
32 by an informant.

33 (c) In any case under this Section, the prosecution

1 shall timely disclose in discovery:

2 (1) the complete criminal history of the informant;

3 (2) any deal, promise, inducement, or benefit that
4 the offering party has made or will make in the future to
5 the informant;

6 (3) the statements made by the accused;

7 (4) the time and place of the statements, the time
8 and place of their disclosure to law enforcement
9 officials, and the names of all persons who were present
10 when the statements were made;

11 (5) whether at any time the informant recanted that
12 testimony or statement and, if so, the time and place of
13 the recantation, the nature of the recantation, and the
14 names of the persons who were present at the recantation;

15 (6) other cases in which the informant testified,
16 provided that the existence of such testimony can be
17 ascertained through reasonable inquiry and whether the
18 informant received any promise, inducement, or benefit in
19 exchange for or subsequent to that testimony or
20 statement; and

21 (7) any other information relevant to the
22 informant's credibility.

23 (d) In any case under this Section, the prosecution must
24 timely disclose its intent to introduce the testimony of an
25 informant. The court shall conduct a hearing to determine
26 whether the testimony of the informant is reliable, unless
27 the defendant waives such a hearing. If the prosecution
28 fails to show by a preponderance of the evidence that the
29 informant's testimony is reliable, the court shall not allow
30 the testimony to be heard at trial. At this hearing, the
31 court shall consider the factors enumerated in subsection (c)
32 as well as any other factors relating to reliability.

33 (e) A hearing required under subsection (d) does not
34 apply to statements covered under subsection (b) that are

1 lawfully recorded.

2 (f) This Section applies to all death penalty
3 prosecutions initiated on or after the effective date of this
4 amendatory Act of the 93rd General Assembly.

5 (725 ILCS 5/115-22 new)

6 Sec. 115-22. Witness inducements. When the State
7 intends to introduce the testimony of a witness in a capital
8 case, the State shall, before trial, disclose to the
9 defendant and to his or her defense counsel the following
10 information, which shall be reduced to writing:

11 (1) whether the witness has received or been
12 promised anything, including pay, immunity from
13 prosecution, leniency in prosecution, or personal
14 advantage, in exchange for testimony;

15 (2) any other case in which the witness testified
16 or offered statements against an individual but was not
17 called, and whether the statements were admitted in the
18 case, and whether the witness received any deal, promise,
19 inducement, or benefit in exchange for that testimony or
20 statement; provided that the existence of such testimony
21 can be ascertained through reasonable inquiry;

22 (3) whether the witness has ever changed his or her
23 testimony;

24 (4) the criminal history of the witness; and

25 (5) any other evidence relevant to the credibility
26 of the witness.

27 (725 ILCS 5/116-3)

28 Sec. 116-3. Motion for fingerprint or forensic testing
29 not available at trial regarding actual innocence.

30 (a) A defendant may make a motion before the trial court
31 that entered the judgment of conviction in his or her case
32 for the performance of fingerprint or forensic DNA testing,

1 including comparison analysis of genetic marker groupings of
2 the evidence collected by criminal justice agencies pursuant
3 to the alleged offense, to those of the defendant, to those
4 of other forensic evidence, and to those maintained under
5 subsection (f) of Section 5-4-3 of the Unified Code of
6 Corrections, on evidence that was secured in relation to the
7 trial which resulted in his or her conviction, but which was
8 not subject to the testing which is now requested because the
9 technology for the testing was not available at the time of
10 trial. Reasonable notice of the motion shall be served upon
11 the State.

12 (b) The defendant must present a prima facie case that:

13 (1) identity was the issue in the trial which
14 resulted in his or her conviction; and

15 (2) the evidence to be tested has been subject to a
16 chain of custody sufficient to establish that it has not
17 been substituted, tampered with, replaced, or altered in
18 any material aspect.

19 (c) The trial court shall allow the testing under
20 reasonable conditions designed to protect the State's
21 interests in the integrity of the evidence and the testing
22 process upon a determination that:

23 (1) the result of the testing has the scientific
24 potential to produce new, noncumulative evidence
25 materially relevant to the defendant's assertion of
26 actual innocence even though the results may not
27 completely exonerate the defendant;

28 (2) the testing requested employs a scientific
29 method generally accepted within the relevant scientific
30 community.

31 (Source: P.A. 90-141, eff. 1-1-98.)

32 (725 ILCS 5/116-5 new)

33 Sec. 116-5. Motion for DNA database search (genetic

1 marker groupings comparison analysis).

2 (a) Upon motion by a defendant charged with any offense
3 where DNA evidence may be material to the defense
4 investigation or relevant at trial, a court may order a DNA
5 database search by the Department of State Police. Such
6 analysis may include comparing:

7 (1) the genetic profile from forensic evidence that
8 was secured in relation to the trial against the genetic
9 profile of the defendant,

10 (2) the genetic profile of items of forensic
11 evidence secured in relation to trial to the genetic
12 profile of other forensic evidence secured in relation to
13 trial, or

14 (3) the genetic profiles referred to in
15 subdivisions (1) and (2) against:

16 (i) genetic profiles of offenders maintained
17 under subsection (f) of Section 5-4-3 of the Unified
18 Code of Corrections, or

19 (ii) genetic profiles, including but not
20 limited to, profiles from unsolved crimes maintained
21 in state or local DNA databases by law enforcement
22 agencies.

23 (b) If appropriate federal criteria are met, the court
24 may order the Department of State Police to request the
25 National DNA index system to search its database of genetic
26 profiles.

27 (c) If requested by the defense, a defense
28 representative shall be allowed to view any genetic marker
29 grouping analysis conducted by the Department of State
30 Police. The defense shall be provided with copies of all
31 documentation, correspondence, including digital
32 correspondence, notes, memoranda, and reports generated in
33 relation to the analysis.

34 (d) Reasonable notice of the motion shall be served upon

1 the State.

2 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

3 Sec. 122-1. Petition in the trial court.

4 (a) Any person imprisoned in the penitentiary may
5 institute a proceeding under this Article if the person who
6 asserts that:

7 (1) in the proceedings which resulted in his or her
8 conviction there was a substantial denial of his or her
9 rights under the Constitution of the United States or of
10 the State of Illinois or both; or may--institute--a
11 proceeding-under-this-Article.

12 (2) the death penalty was imposed and there is
13 newly discovered evidence not available to the person at
14 the time of the proceeding that resulted in his or her
15 conviction that establishes a substantial basis to
16 believe that the defendant is actually innocent by clear
17 and convincing evidence.

18 (a-5) A proceeding under paragraph (2) of subsection (a)
19 may be commenced within a reasonable period of time after the
20 person's conviction notwithstanding any other provisions of
21 this Article. In such a proceeding regarding actual
22 innocence, if the court determines the petition is frivolous
23 or is patently without merit, it shall dismiss the petition
24 in a written order, specifying the findings of fact and
25 conclusions of law it made in reaching its decision. Such
26 order of dismissal is a final judgment and shall be served
27 upon the petitioner by certified mail within 10 days of its
28 entry.

29 (b) The proceeding shall be commenced by filing with the
30 clerk of the court in which the conviction took place a
31 petition (together with a copy thereof) verified by
32 affidavit. Petitioner shall also serve another copy upon the
33 State's Attorney by any of the methods provided in Rule 7 of

1 the Supreme Court. The clerk shall docket the petition for
2 consideration by the court pursuant to Section 122-2.1 upon
3 his or her receipt thereof and bring the same promptly to the
4 attention of the court.

5 (c) Except as otherwise provided in subsection (a-5), if
6 the petitioner is under sentence of death, no proceedings
7 under this Article shall be commenced more than 6 months
8 after the denial of a petition for certiorari to the United
9 States Supreme Court on direct appeal, or more than 6 months
10 from the date for filing such a petition if none is filed,
11 unless the petitioner alleges facts showing that the delay
12 was not due to his or her culpable negligence.

13 When a defendant has a sentence other than death, no
14 proceedings under this Article shall be commenced more than 6
15 months after the denial of the Petition for Leave to Appeal
16 to the Illinois Supreme Court, or more than 6 months from the
17 date for filing such a petition if none is filed, unless the
18 petitioner alleges facts showing that the delay was not due
19 to his or her culpable negligence.

20 This limitation does not apply to a petition advancing a
21 claim of actual innocence. no-proceedings-under-this--Article
22 shall--be--commenced-more-than-6-months-after-the-denial-of-a
23 petition-for-leave--to-appeal-or-the-date-for-filing--such--a
24 petition--if--none--is--filed--or-more-than-45-days-after-the
25 defendant-files-his--or--her--brief--in--the--appeal--of--the
26 sentence--before--the-Illinois-Supreme-Court-(or-more-than-45
27 days-after-the-deadline-for-the--filing--of--the--defendant's
28 brief--with--the-Illinois-Supreme-Court-if-no-brief-is-filed)
29 or-3-years-from-the-date-of-conviction, whichever is--sooner,
30 unless--the--petitioner--alleges-facts-showing-that-the-delay
31 was-not-due-to-his-or-her-culpable-negligence.

32 (d) A person seeking relief by filing a petition under
33 this Section must specify in the petition or its heading that
34 it is filed under this Section. A trial court that has

1 received a petition complaining of a conviction or sentence
2 that fails to specify in the petition or its heading that it
3 is filed under this Section need not evaluate the petition to
4 determine whether it could otherwise have stated some grounds
5 for relief under this Article.

6 (e) A proceeding under this Article may not be commenced
7 on behalf of a defendant who has been sentenced to death
8 without the written consent of the defendant, unless the
9 defendant, because of a mental or physical condition, is
10 incapable of asserting his or her own claim.

11 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
12 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

13 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

14 Sec. 122-2.1. (a) Within 90 days after the filing and
15 docketing of each petition, the court shall examine such
16 petition and enter an order thereon pursuant to this Section.

17 (1) If the petitioner is under sentence of death
18 and is without counsel and alleges that he is without
19 means to procure counsel, he shall state whether or not
20 he wishes counsel to be appointed to represent him. If
21 appointment of counsel is so requested, the court shall
22 appoint counsel if satisfied that the petitioner has no
23 means to procure counsel.

24 (2) If the petitioner is sentenced to imprisonment
25 and the court determines the petition is frivolous or is
26 patently without merit, it shall dismiss the petition in
27 a written order, specifying the findings of fact and
28 conclusions of law it made in reaching its decision.
29 Such order of dismissal is a final judgment and shall be
30 served upon the petitioner by certified mail within 10
31 days of its entry.

32 (b) If the petition is not dismissed pursuant to this
33 Section, the court shall order the petition to be docketed

1 for further consideration in accordance with Sections 122-4
2 through 122-6. If the petitioner is under sentence of death,
3 the court shall order the petition to be docketed for further
4 consideration and hearing within one year of the filing of
5 the petition. Continuances may be granted as the court deems
6 appropriate.

7 (c) In considering a petition pursuant to this Section,
8 the court may examine the court file of the proceeding in
9 which the petitioner was convicted, any action taken by an
10 appellate court in such proceeding and any transcripts of
11 such proceeding.

12 (Source: P.A. 86-655; 87-904.)

13 (725 ILCS 5/122-2.2 new)

14 Sec. 122-2.2. Mental retardation and post-conviction
15 relief.

16 (a) In cases where no determination of mental
17 retardation was made and a defendant has been convicted of
18 first-degree murder, sentenced to death, and is in custody
19 pending execution of the sentence of death, the following
20 procedures shall apply:

21 (1) Notwithstanding any other provision of law or
22 rule of court, a defendant may seek relief from the death
23 sentence through a petition for post-conviction relief
24 under this Article alleging that the defendant was
25 mentally retarded as defined in Section 114-15 at the
26 time the offense was alleged to have been committed.

27 (2) The petition must be filed within 180 days of
28 the effective date of this amendatory Act of the 93rd
29 General Assembly or within 180 days of the issuance of
30 the mandate by the Illinois Supreme Court setting the
31 date of execution, whichever is later.

32 (3) All other provisions of this Article governing
33 petitions for post-conviction relief shall apply to a

1 petition for post-conviction relief alleging mental
2 retardation.

3 Section 20. The Capital Crimes Litigation Act is amended
4 by changing Sections 15 and 19 as follows:

5 (725 ILCS 124/15)

6 (Section scheduled to be repealed on July 1, 2004)

7 Sec. 15. Capital Litigation Trust Fund.

8 (a) The Capital Litigation Trust Fund is created as a
9 special fund in the State Treasury. The Trust Fund shall be
10 administered by the State Treasurer to provide moneys for the
11 appropriations to be made, grants to be awarded, and
12 compensation and expenses to be paid under this Act. All
13 interest earned from the investment or deposit of moneys
14 accumulated in the Trust Fund shall, under Section 4.1 of the
15 State Finance Act, be deposited into the Trust Fund.

16 (b) Moneys deposited into the Trust Fund shall not be
17 considered general revenue of the State of Illinois.

18 (c) Moneys deposited into the Trust Fund shall be used
19 exclusively for the purposes of providing funding for the
20 prosecution and defense of capital cases as provided in this
21 Act and shall not be appropriated, loaned, or in any manner
22 transferred to the General Revenue Fund of the State of
23 Illinois.

24 (d) Every fiscal year the State Treasurer shall transfer
25 from the General Revenue Fund to the Capital Litigation Trust
26 Fund an amount equal to the full amount of moneys
27 appropriated by the General Assembly (both by original and
28 supplemental appropriation), less any unexpended balance from
29 the previous fiscal year, from the Capital Litigation Trust
30 Fund for the specific purpose of making funding available for
31 the prosecution and defense of capital cases. The Public
32 Defender and State's Attorney in Cook County, the State

1 Appellate Defender, the State's Attorneys Appellate
2 Prosecutor, and the Attorney General shall make annual
3 requests for appropriations from the Trust Fund.

4 (1) The Public Defender in Cook County shall
5 request appropriations to the State Treasurer for
6 expenses incurred by the Public Defender and for funding
7 for private appointed defense counsel in Cook County.

8 (2) The State's Attorney in Cook County shall
9 request an appropriation to the State Treasurer for
10 expenses incurred by the State's Attorney.

11 (3) The State Appellate Defender shall request a
12 direct appropriation from the Trust Fund for expenses
13 incurred by the State Appellate Defender in providing
14 assistance to trial attorneys under item (c)(5) of
15 Section 10 of the State Appellate Defender Act and an
16 appropriation to the State Treasurer for payments from
17 the Trust Fund for the defense of cases in counties other
18 than Cook County.

19 (4) The State's Attorneys Appellate Prosecutor
20 shall request a direct appropriation from the Trust Fund
21 to pay expenses incurred by the State's Attorneys
22 Appellate Prosecutor and an appropriation to the State
23 Treasurer for payments from the Trust Fund for expenses
24 incurred by State's Attorneys in counties other than Cook
25 County.

26 (5) The Attorney General shall request a direct
27 appropriation from the Trust Fund to pay expenses
28 incurred by the Attorney General in assisting the State's
29 Attorneys in counties other than Cook County.

30 The Public Defender and State's Attorney in Cook County,
31 the State Appellate Defender, the State's Attorneys Appellate
32 Prosecutor, and the Attorney General may each request
33 supplemental appropriations from the Trust Fund during the
34 fiscal year.

1 (e) Moneys in the Trust Fund shall be expended only as
2 follows:

3 (1) To pay the State Treasurer's costs to
4 administer the Trust Fund. The amount for this purpose
5 may not exceed 5% in any one fiscal year of the amount
6 otherwise appropriated from the Trust Fund in the same
7 fiscal year.

8 (2) To pay the capital litigation expenses of trial
9 defense including, but not limited to, DNA testing,
10 including DNA testing under Section 116-3 of the Code of
11 Criminal Procedure of 1963, analysis, and expert
12 testimony, investigatory and other assistance, expert,
13 forensic, and other witnesses, and mitigation
14 specialists, and grants and aid provided to public
15 defenders or assistance to attorneys who have been
16 appointed by the court to represent defendants who are
17 charged with capital crimes.

18 (3) To pay the compensation of trial attorneys,
19 other than public defenders, who have been appointed by
20 the court to represent defendants who are charged with
21 capital crimes.

22 (4) To provide State's Attorneys with funding for
23 capital litigation expenses including, but not limited
24 to, investigatory and other assistance and expert,
25 forensic, and other witnesses necessary to prosecute
26 capital cases. State's Attorneys in any county other
27 than Cook County seeking funding for capital litigation
28 expenses including, but not limited to, investigatory and
29 other assistance and expert, forensic, or other witnesses
30 under this Section may request that the State's Attorneys
31 Appellate Prosecutor or the Attorney General, as the case
32 may be, certify the expenses as reasonable, necessary,
33 and appropriate for payment from the Trust Fund, on a
34 form created by the State Treasurer. Upon certification

1 of the expenses and delivery of the certification to the
2 State Treasurer, the Treasurer shall pay the expenses
3 directly from the Capital Litigation Trust Fund if there
4 are sufficient moneys in the Trust Fund to pay the
5 expenses.

6 (5) To provide financial support through the
7 Attorney General pursuant to the Attorney General Act for
8 the several county State's Attorneys outside of Cook
9 County, but shall not be used to increase personnel for
10 the Attorney General's Office.

11 (6) To provide financial support through the
12 State's Attorneys Appellate Prosecutor pursuant to the
13 State's Attorneys Appellate Prosecutor's Act for the
14 several county State's Attorneys outside of Cook County,
15 but shall not be used to increase personnel for the
16 State's Attorneys Appellate Prosecutor.

17 (7) To provide financial support to the State
18 Appellate Defender pursuant to the State Appellate
19 Defender Act.

20 Moneys expended from the Trust Fund shall be in addition
21 to county funding for Public Defenders and State's Attorneys,
22 and shall not be used to supplant or reduce ordinary and
23 customary county funding.

24 (f) Moneys in the Trust Fund shall be appropriated to
25 the State Appellate Defender, the State's Attorneys Appellate
26 Prosecutor, the Attorney General, and the State Treasurer.
27 The State Appellate Defender shall receive an appropriation
28 from the Trust Fund to enable it to provide assistance to
29 appointed defense counsel throughout the State and to Public
30 Defenders in counties other than Cook. The State's Attorneys
31 Appellate Prosecutor and the Attorney General shall receive
32 appropriations from the Trust Fund to enable them to provide
33 assistance to State's Attorneys in counties other than Cook
34 County. Moneys shall be appropriated to the State Treasurer

1 to enable the Treasurer (i) to make grants to Cook County,
2 (ii) to pay the expenses of Public Defenders and State's
3 Attorneys in counties other than Cook County, (iii) to pay
4 the expenses and compensation of appointed defense counsel in
5 counties other than Cook County, and (iv) to pay the costs of
6 administering the Trust Fund. All expenditures and grants
7 made from the Trust Fund shall be subject to audit by the
8 Auditor General.

9 (g) For Cook County, grants from the Trust Fund shall be
10 made and administered as follows:

11 (1) For each State fiscal year, the State's
12 Attorney and Public Defender must each make a separate
13 application to the State Treasurer for capital litigation
14 grants.

15 (2) The State Treasurer shall establish rules and
16 procedures for grant applications. The rules shall
17 require the Cook County Treasurer as the grant recipient
18 to report on a periodic basis to the State Treasurer how
19 much of the grant has been expended, how much of the
20 grant is remaining, and the purposes for which the grant
21 has been used. The rules may also require the Cook
22 County Treasurer to certify on a periodic basis that
23 expenditures of the funds have been made for expenses
24 that are reasonable, necessary, and appropriate for
25 payment from the Trust Fund.

26 (3) The State Treasurer shall make the grants to
27 the Cook County Treasurer as soon as possible after the
28 beginning of the State fiscal year.

29 (4) The State's Attorney or Public Defender may
30 apply for supplemental grants during the fiscal year.

31 (5) Grant moneys shall be paid to the Cook County
32 Treasurer in block grants and held in separate accounts
33 for the State's Attorney, the Public Defender, and court
34 appointed defense counsel other than the Cook County

1 Public Defender, respectively, for the designated fiscal
2 year, and are not subject to county appropriation.

3 (6) Expenditure of grant moneys under this
4 subsection (g) is subject to audit by the Auditor
5 General.

6 (7) The Cook County Treasurer shall immediately
7 make payment from the appropriate separate account in the
8 county treasury for capital litigation expenses to the
9 State's Attorney, Public Defender, or court appointed
10 defense counsel other than the Public Defender, as the
11 case may be, upon order of the State's Attorney, Public
12 Defender or the court, respectively.

13 (h) If a defendant in a capital case in Cook County is
14 represented by court appointed counsel other than the Cook
15 County Public Defender, the appointed counsel shall petition
16 the court for an order directing the Cook County Treasurer to
17 pay the court appointed counsel's reasonable and necessary
18 compensation and capital litigation expenses from grant
19 moneys provided from the Trust Fund. These petitions shall be
20 considered in camera. Orders denying petitions for
21 compensation or expenses are final. Counsel may not petition
22 for expenses that may have been provided or compensated by
23 the State Appellate Defender under item (c)(5) of Section 10
24 of the State Appellate Defender Act.

25 (i) In counties other than Cook County, and excluding
26 capital litigation expenses or services that may have been
27 provided by the State Appellate Defender under item (c)(5) of
28 Section 10 of the State Appellate Defender Act:

29 (1) Upon certification by the circuit court, on a
30 form created by the State Treasurer, that all or a
31 portion of the expenses are reasonable, necessary, and
32 appropriate for payment from the Trust Fund and the
33 court's delivery of the certification to the Treasurer,
34 the Treasurer shall pay the certified expenses of Public

1 Defenders from the money appropriated to the Treasurer
2 for capital litigation expenses of Public Defenders in
3 any county other than Cook County, if there are
4 sufficient moneys in the Trust Fund to pay the expenses.

5 (2) If a defendant in a capital case is represented
6 by court appointed counsel other than the Public
7 Defender, the appointed counsel shall petition the court
8 to certify compensation and capital litigation expenses
9 including, but not limited to, investigatory and other
10 assistance, expert, forensic, and other witnesses, and
11 mitigation specialists as reasonable, necessary, and
12 appropriate for payment from the Trust Fund. Upon
13 certification on a form created by the State Treasurer of
14 all or a portion of the compensation and expenses
15 certified as reasonable, necessary, and appropriate for
16 payment from the Trust Fund and the court's delivery of
17 the certification to the Treasurer, the State Treasurer
18 shall pay the certified compensation and expenses from
19 the money appropriated to the Treasurer for that purpose,
20 if there are sufficient moneys in the Trust Fund to make
21 those payments.

22 (3) A petition for capital litigation expenses
23 under this subsection shall be considered in camera.
24 Orders denying petitions for compensation or expenses are
25 final.

26 (j) If the Trust Fund is discontinued or dissolved by an
27 Act of the General Assembly or by operation of law, any
28 balance remaining in the Trust Fund shall be returned to the
29 General Revenue Fund after deduction of administrative costs,
30 any other provision of this Act to the contrary
31 notwithstanding.

32 (Source: P.A. 91-589, eff. 1-1-00.)

33 (725 ILCS 124/19)

1 (Section scheduled to be repealed on July 1, 2004)

2 Sec. 19. Report; repeal.

3 (a) The Cook County Public Defender, the Cook County
4 State's Attorney, the State Appellate Defender, the State's
5 Attorneys Appellate Prosecutor, and the Attorney General
6 shall each report separately to the General Assembly by
7 January 1, 2004 detailing the amounts of money received by
8 them through this Act, the uses for which those funds were
9 expended, the balances then in the Capital Litigation Trust
10 Fund or county accounts, as the case may be, dedicated to
11 them for the use and support of Public Defenders, appointed
12 trial defense counsel, and State's Attorneys, as the case may
13 be. The report shall describe and discuss the need for
14 continued funding through the Fund and contain any
15 suggestions for changes to this Act.

16 (b) (Blank). ~~Unless--the--General--Assembly--provides~~
17 ~~otherwise,--this--Act--is--repealed--on--July--1,--2004.~~

18 (Source: P.A. 91-589, eff. 1-1-00.)

19 Section 25. The Unified Code of Corrections is amended
20 by changing Section 5-4-3 as follows:

21 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

22 Sec. 5-4-3. Persons convicted of, or found delinquent
23 for, certain offenses or institutionalized as sexually
24 dangerous; specimens; genetic marker groups.

25 (a) Any person convicted of, found guilty under the
26 Juvenile Court Act of 1987 for, or who received a disposition
27 of court supervision for, a qualifying offense or attempt of
28 a qualifying offense, convicted or found guilty of any
29 offense classified as a felony under Illinois law, found
30 guilty or given supervision for any offense classified as a
31 felony under the Juvenile Court Act of 1987, or
32 institutionalized as a sexually dangerous person under the

1 Sexually Dangerous Persons Act, or committed as a sexually
 2 violent person under the Sexually Violent Persons Commitment
 3 Act shall, regardless of the sentence or disposition imposed,
 4 be required to submit specimens of blood, saliva, or tissue
 5 to the Illinois Department of State Police in accordance with
 6 the provisions of this Section, provided such person is:

7 (1) convicted of a qualifying offense or attempt of
 8 a qualifying offense on or after July 1, 1990 the
 9 ~~effective--date--of--this--amendatory--Act--of--1989~~, and
 10 sentenced to a term of imprisonment, periodic
 11 imprisonment, fine, probation, conditional discharge or
 12 any other form of sentence, or given a disposition of
 13 court supervision for the offense;~~7-er~~

14 (1.5) found guilty or given supervision under the
 15 Juvenile Court Act of 1987 for a qualifying offense or
 16 attempt of a qualifying offense on or after January 1,
 17 1997; ~~the-effective-date-of-this-amendatory-Act-of-1996~~,
 18 ~~er~~

19 (2) ordered institutionalized as a sexually
 20 dangerous person on or after July 1, 1990; ~~the--effective~~
 21 ~~date-of-this-amendatory-Act-of-1989~~; ~~er~~

22 (3) convicted of a qualifying offense or attempt of
 23 a qualifying offense before July 1, 1990 ~~the-effective~~
 24 ~~date-of-this-amendatory-Act--of--1989~~ and is presently
 25 confined as a result of such conviction in any State
 26 correctional facility or county jail or is presently
 27 serving a sentence of probation, conditional discharge or
 28 periodic imprisonment as a result of such conviction;~~7-er~~

29 (3.5) convicted or found guilty of any offense
 30 classified as a felony under Illinois law or found guilty
 31 or given supervision for such an offense under the
 32 Juvenile Court Act of 1987 on or after August 22, 2002;
 33 ~~the-effective-date--of--this--amendatory--Act--of--the--92nd~~
 34 ~~General-Assembly~~; ~~er~~

1 (4) presently institutionalized as a sexually
2 dangerous person or presently institutionalized as a
3 person found guilty but mentally ill of a sexual offense
4 or attempt to commit a sexual offense; or

5 (4.5) ordered committed as a sexually violent
6 person on or after the effective date of the Sexually
7 Violent Persons Commitment Act; or

8 (5) seeking transfer to or residency in Illinois
9 under Sections 3-3-11.05 through 3-3-11.5 of the Unified
10 Code of Corrections and the Interstate Compact for Adult
11 Offender Supervision or the Interstate Agreements on
12 Sexually Dangerous Persons Act.

13 Notwithstanding other provisions of this Section, any
14 person incarcerated in a facility of the Illinois Department
15 of Corrections on or after August 22, 2002 ~~the effective date~~
16 ~~of this amendatory Act of the 92nd General Assembly~~ shall be
17 required to submit a specimen of blood, saliva, or tissue
18 prior to his or her release on parole or mandatory supervised
19 release, as a condition of his or her parole or mandatory
20 supervised release.

21 (a-5) Any person who was otherwise convicted of or
22 received a disposition of court supervision for any other
23 offense under the Criminal Code of 1961 or who was found
24 guilty or given supervision for such a violation under the
25 Juvenile Court Act of 1987, may, regardless of the sentence
26 imposed, be required by an order of the court to submit
27 specimens of blood, saliva, or tissue to the Illinois
28 Department of State Police in accordance with the provisions
29 of this Section.

30 (b) Any person required by paragraphs (a)(1), (a)(1.5),
31 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,
32 saliva, or tissue shall provide specimens of blood, saliva,
33 or tissue within 45 days after sentencing or disposition at a
34 collection site designated by the Illinois Department of

1 State Police.

2 (c) Any person required by paragraphs (a)(3), (a)(4),
3 and (a)(4.5) to provide specimens of blood, saliva, or tissue
4 shall be required to provide such samples prior to final
5 discharge, parole, or release at a collection site designated
6 by the Illinois Department of State Police.

7 (c-5) Any person required by paragraph (a)(5) to provide
8 specimens of blood, saliva, or tissue shall, where feasible,
9 be required to provide the specimens before being accepted
10 for conditioned residency in Illinois under the interstate
11 compact or agreement, but no later than 45 days after arrival
12 in this State.

13 (c-6) The Illinois Department of State Police may
14 determine which type of specimen or specimens, blood, saliva,
15 or tissue, is acceptable for submission to the Division of
16 Forensic Services for analysis.

17 (d) The Illinois Department of State Police shall
18 provide all equipment and instructions necessary for the
19 collection of blood samples. The collection of samples shall
20 be performed in a medically approved manner. Only a
21 physician authorized to practice medicine, a registered nurse
22 or other qualified person trained in venipuncture may
23 withdraw blood for the purposes of this Act. The samples
24 shall thereafter be forwarded to the Illinois Department of
25 State Police, Division of Forensic Services, for analysis and
26 categorizing into genetic marker groupings.

27 (d-1) The Illinois Department of State Police shall
28 provide all equipment and instructions necessary for the
29 collection of saliva samples. The collection of saliva
30 samples shall be performed in a medically approved manner.
31 Only a person trained in the instructions promulgated by the
32 Illinois State Police on collecting saliva may collect saliva
33 for the purposes of this Section. The samples shall
34 thereafter be forwarded to the Illinois Department of State

1 Police, Division of Forensic Services, for analysis and
2 categorizing into genetic marker groupings.

3 (d-2) The Illinois Department of State Police shall
4 provide all equipment and instructions necessary for the
5 collection of tissue samples. The collection of tissue
6 samples shall be performed in a medically approved manner.
7 Only a person trained in the instructions promulgated by the
8 Illinois State Police on collecting tissue may collect tissue
9 for the purposes of this Section. The samples shall
10 thereafter be forwarded to the Illinois Department of State
11 Police, Division of Forensic Services, for analysis and
12 categorizing into genetic marker groupings.

13 (d-5) To the extent that funds are available, the
14 Illinois Department of State Police shall contract with
15 qualified personnel and certified laboratories for the
16 collection, analysis, and categorization of known samples.

17 (e) The genetic marker groupings shall be maintained by
18 the Illinois Department of State Police, Division of Forensic
19 Services.

20 (f) The genetic marker grouping analysis information
21 obtained pursuant to this Act shall be confidential and shall
22 be released only to peace officers of the United States, of
23 other states or territories, of the insular possessions of
24 the United States, of foreign countries duly authorized to
25 receive the same, to all peace officers of the State of
26 Illinois and to all prosecutorial agencies, and to defense
27 counsel as provided by Section 116-5 of the Code of Criminal
28 Procedure of 1963. The genetic marker grouping analysis
29 information obtained pursuant to this Act shall be used only
30 for (i) valid law enforcement identification purposes and as
31 required by the Federal Bureau of Investigation for
32 participation in the National DNA database or (ii) technology
33 validation purposes or (iii) assisting in the defense of the
34 criminally accused pursuant to Section 116-5 of the Code of

1 Criminal Procedure of 1963. Notwithstanding any other
2 statutory provision to the contrary, all information obtained
3 under this Section shall be maintained in a single State data
4 base, which may be uploaded into a national database, and
5 which information may be subject to expungement only as set
6 forth in subsection (f-1).

7 (f-1) Upon receipt of notification of a reversal of a
8 conviction based on actual innocence, or of the granting of a
9 pardon pursuant to Section 12 of Article V of the Illinois
10 Constitution, if that pardon document specifically states
11 that the reason for the pardon is the actual innocence of an
12 individual whose DNA record has been stored in the State or
13 national DNA identification index in accordance with this
14 Section by the Illinois Department of State Police, the DNA
15 record shall be expunged from the DNA identification index,
16 and the Department shall by rule prescribe procedures to
17 ensure that the record and any samples, analyses, or other
18 documents relating to such record, whether in the possession
19 of the Department or any law enforcement or police agency, or
20 any forensic DNA laboratory, including any duplicates or
21 copies thereof, are destroyed and a letter is sent to the
22 court verifying the expungement is completed.

23 (f-5) Any person who intentionally uses genetic marker
24 grouping analysis information, or any other information
25 derived from a DNA sample, beyond the authorized uses as
26 provided under this Section, or any other Illinois law, is
27 guilty of a Class 4 felony, and shall be subject to a fine of
28 not less than \$5,000.

29 (g) For the purposes of this Section, "qualifying
30 offense" means any of the following:

31 (1) any violation or inchoate violation of Section
32 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
33 Criminal Code of 1961~~i7-er~~

34 (1.1) any violation or inchoate violation of

1 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,
 2 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961
 3 for which persons are convicted on or after July 1,
 4 2001;~~7-0~~

5 (2) any former statute of this State which defined
 6 a felony sexual offense;~~7-0~~

7 (3) (blank);~~7-0~~

8 (4) any inchoate violation of Section 9-3.1,
 9 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961;~~7~~
 10 or

11 (5) any violation or inchoate violation of Article
 12 29D of the Criminal Code of 1961.

13 (g-5) (Blank).

14 (h) The Illinois Department of State Police shall be the
 15 State central repository for all genetic marker grouping
 16 analysis information obtained pursuant to this Act. The
 17 Illinois Department of State Police may promulgate rules for
 18 the form and manner of the collection of blood, saliva, or
 19 tissue samples and other procedures for the operation of this
 20 Act. The provisions of the Administrative Review Law shall
 21 apply to all actions taken under the rules so promulgated.

22 (i) A person required to provide a blood, saliva, or
 23 tissue specimen shall cooperate with the collection of the
 24 specimen and any deliberate act by that person intended to
 25 impede, delay or stop the collection of the blood, saliva, or
 26 tissue specimen is a Class A misdemeanor.

27 (j) Any person required by subsection (a) to submit
 28 specimens of blood, saliva, or tissue to the Illinois
 29 Department of State Police for analysis and categorization
 30 into genetic marker grouping, in addition to any other
 31 disposition, penalty, or fine imposed, shall pay an analysis
 32 fee of \$200. If the analysis fee is not paid at the time of
 33 sentencing, the court shall establish a fee schedule by which
 34 the entire amount of the analysis fee shall be paid in full,

1 such schedule not to exceed 24 months from the time of
2 conviction. The inability to pay this analysis fee shall not
3 be the sole ground to incarcerate the person.

4 (k) All analysis and categorization fees provided for by
5 subsection (j) shall be regulated as follows:

6 (1) The State Offender DNA Identification System
7 Fund is hereby created as a special fund in the State
8 Treasury.

9 (2) All fees shall be collected by the clerk of the
10 court and forwarded to the State Offender DNA
11 Identification System Fund for deposit. The clerk of the
12 circuit court may retain the amount of \$10 from each
13 collected analysis fee to offset administrative costs
14 incurred in carrying out the clerk's responsibilities
15 under this Section.

16 (3) Fees deposited into the State Offender DNA
17 Identification System Fund shall be used by Illinois
18 State Police crime laboratories as designated by the
19 Director of State Police. These funds shall be in
20 addition to any allocations made pursuant to existing
21 laws and shall be designated for the exclusive use of
22 State crime laboratories. These uses may include, but
23 are not limited to, the following:

24 (A) Costs incurred in providing analysis and
25 genetic marker categorization as required by
26 subsection (d).

27 (B) Costs incurred in maintaining genetic
28 marker groupings as required by subsection (e).

29 (C) Costs incurred in the purchase and
30 maintenance of equipment for use in performing
31 analyses.

32 (D) Costs incurred in continuing research and
33 development of new techniques for analysis and
34 genetic marker categorization.

1 (E) Costs incurred in continuing education,
2 training, and professional development of forensic
3 scientists regularly employed by these laboratories.

4 (1) The failure of a person to provide a specimen, or of
5 any person or agency to collect a specimen, within the 45 day
6 period shall in no way alter the obligation of the person to
7 submit such specimen, or the authority of the Illinois
8 Department of State Police or persons designated by the
9 Department to collect the specimen, or the authority of the
10 Illinois Department of State Police to accept, analyze and
11 maintain the specimen or to maintain or upload results of
12 genetic marker grouping analysis information into a State or
13 national database.

14 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;
15 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.
16 6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised
17 1-20-03.)

18 Section 95. Severability. The provisions of this Act
19 are severable under Section 1.31 of the Statute on Statutes.

20 Section 99. Effective date. This Act takes effect upon
21 becoming law."